

16 Am. Jur. 2d Constitutional Law § 156

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Constitutional Law

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V. Determination of Constitutionality of Legislation

B. Raising Questions of Constitutional Validity

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§ 156. Standing of citizens, residents, and aliens to challenge constitutionality of statute

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[Validity of state statutes restricting right of aliens to bear arms, 28 A.L.R.4th 1096](#)

A mere citizen, as such, has no right to raise the question of the constitutionality of a statute in the absence of a showing of direct injury.¹ Thus, he or she may not complain about the legality of expenditures of public funds² or contest the policies of prosecuting authorities when the citizen is neither being prosecuted nor threatened with prosecution,³ or attack the practice of some members of Congress in holding reserve commissions in the military in an alleged violation of a provision of the United States Constitution.⁴ Citizens have no standing to assert constitutional rights that apply only to states.⁵ However, the citizens of a state who do not own real property have Article III standing to challenge under the Equal Protection Clause, a state law requirement that one own real property in order to serve on a government board.⁶

Citizens who alleged that a large Latin cross which had been erected on a butte in a city park prevented them from freely using the area on and around the butte had standing to bring an action alleging that the city's ownership and display of the cross

violated the Establishment Clause.⁷ A United States citizen who wished to use and exhibit Canadian films termed "political propaganda" under federal law had standing to bring an action challenging the constitutionality of the use of the phrase "political propaganda" in the statute since the citizen's personal, political, and professional reputation would suffer from the use of the phrase if he exhibited films labeled as "political propaganda."⁸

Similarly, residents of a state or particular area have no special status to challenge the constitutionality of legislation not affecting them directly.⁹ Thus, residents of a state or city cannot attack the constitutionality of a statute or ordinance on the ground that it discriminates against nonresidents.¹⁰ However, residents of a state earning income while working in another state have standing to challenge the constitutionality of a commuter's income tax enacted by the other state even though the state of residence provides a credit for any taxes paid to foreign jurisdictions.¹¹ State residents who faced penalties for failure to pay an allegedly unconstitutional impact fee on vehicles purchased or titled out of state but subsequently registered in-state by state residents had standing to challenge the constitutionality of the fee even though they had either not paid the fee or had not requested a refund.¹² Also, residents have standing to challenge the legality of territorial restrictions imposed by statutes on the taking and catching of crabs and oysters since such restrictions would have a severe economic effect on them.¹³

An alien has no right to raise the constitutional question of immunities and prerogatives pertaining solely to citizens of the state.¹⁴ Nor does a nonresident alien have a right to invoke the Equal Protection and Due Process Clauses of the Constitution which, due to their territorial nature, apply solely to citizens and resident aliens.¹⁵ However, aliens legally within the United States may challenge the constitutionality of federal and state actions.¹⁶ For example, resident aliens have standing to challenge the constitutionality of a state education law provision requiring that applicants for scholarships and tuition assistance awards be United States citizens or be persons who intend to become citizens.¹⁷

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Footnotes

- 1 [Troutman v. Shriver](#), 417 F.2d 171 (5th Cir. 1969).
As to what constitutes a direct interest or injury, see § 143.
- 2 [Mottola v. Nixon](#), 464 F.2d 178 (9th Cir. 1972) (the court would not hear a claim that plaintiffs had been injured in their status as citizens by the economic loss and hardship of financing the conflict in Vietnam).
- 3 [Linda R.S. v. Richard D.](#), 410 U.S. 614, 93 S. Ct. 1146, 35 L. Ed. 2d 536 (1973).
- 4 [Schlesinger v. Reservists Committee to Stop the War](#), 418 U.S. 208, 94 S. Ct. 2925, 41 L. Ed. 2d 706 (1974) ("generalized interests" and "abstract injuries" are not enough to confer standing).
- 5 [Hickman v. Block](#), 81 F.3d 98 (9th Cir. 1996) (states alone stand in a position to show legal injury when the Second Amendment right to bear arms is infringed, and thus, only states have standing to sue to protect such a right).
- 6 [Quinn v. Millsap](#), 491 U.S. 95, 109 S. Ct. 2324, 105 L. Ed. 2d 74 (1989).
- 7 [Separation of Church and State Committee v. City of Eugene of Lane County, State of Or.](#), 93 F.3d 617 (9th Cir. 1996).
Similarly, a group has standing to challenge a city's decision to allow a menorah in a park and to challenge the scheme for issuing a special events permit, whether or not the group sought or would seek a special event permit for itself; the group needed only to allege that by allowing the erection of the menorah, the city's permitting scheme interfered with their right freely to use and enjoy the park. [American Jewish Congress v. City of Beverly Hills](#), 90 F.3d 379 (9th Cir. 1996).
- 8 [Meese v. Keene](#), 481 U.S. 465, 107 S. Ct. 1862, 95 L. Ed. 2d 415 (1987).
- 9 [Roxbury Taxpayers Alliance v. Delaware County Bd. of Sup'rs](#), 80 F.3d 42 (2d Cir. 1996); [Lasky v. State Farm Ins. Co.](#), 296 So. 2d 9 (Fla. 1974); [Manzanares v. Bell](#), 214 Kan. 589, 522 P.2d 1291 (1974); [Bonnet v. State](#), 141 N.J. Super. 177, 357 A.2d 772 (Law Div. 1976), judgment aff'd, 155 N.J. Super. 520, 382 A.2d

1175 (App. Div. 1978), *aff'd*, 78 N.J. 325, 395 A.2d 194 (1978); *Booth v. Grissom*, 265 S.C. 190, 217 S.E.2d 223 (1975); *State ex rel. Cope v. Mayor and Aldermen of Town of Morristown*, 218 Tenn. 593, 404 S.W.2d 798 (1966).

10 *Citizens' Nat. Bank v. Commonwealth of Kentucky*, 217 U.S. 443, 30 S. Ct. 532, 54 L. Ed. 832 (1910) (attempted attack by resident shareholders of national bank stock); *O'Neill v. State*, 322 Ark. 299, 908 S.W.2d 637 (1995).

A city employee who resided in the state but not within the city lacked standing to assert a Privileges and Immunities Clause claim against the city based on an ordinance which required city employees to reside within the city since state residents have no standing under that clause to challenge a municipal ordinance. *Salem Blue Collar Workers Ass'n v. City of Salem*, 33 F.3d 265 (3d Cir. 1994) (holding, however, that a union which represented both in-state and out-of-state residents could challenge the statute).

In-state residents lack standing to challenge a state statute or municipal ordinance under the Privileges and Immunities Clause of the Federal Constitution. *Shepherd v. State, Dept. of Fish and Game*, 897 P.2d 33 (Alaska 1995).

11 *Austin v. New Hampshire*, 420 U.S. 656, 95 S. Ct. 1191, 43 L. Ed. 2d 530 (1975).

12 *Department of Revenue v. Kuhnlein*, 646 So. 2d 717 (Fla. 1994), as clarified, (Nov. 30, 1994).

13 *Bruce v. Director, Dept. of Chesapeake Bay Affairs*, 261 Md. 585, 276 A.2d 200 (1971).

14 *In re Johnson's Estate*, 139 Cal. 532, 73 P. 424 (1903).

15 *Jarabe v. Industrial Com'n*, 172 Ill. 2d 345, 216 Ill. Dec. 833, 666 N.E.2d 1 (1996).

16 *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168 (S.D. Cal. 2019).

17 *Mauclet v. Nyquist*, 406 F. Supp. 1233 (W.D. N.Y. 1976), judgment *aff'd*, 432 U.S. 1, 97 S. Ct. 2120, 53 L. Ed. 2d 63 (1977).

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§ 157. Standing of physicians and other health professionals to challenge constitutionality of statute

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[Validity, construction, and application of state statutory provisions limiting amount of recovery in medical malpractice claims, 26 A.L.R.5th 245](#)

A physician has standing to challenge an abortion law that poses for him or her a threat of criminal prosecution.¹ Thus, abortion providers have standing to challenge the constitutionality of a state statute banning abortions after the 20th week of pregnancy where the threat of prosecution under is credible as state prosecutors did not fully disavow future enforcement of the ban.² Indeed, some authority holds that where an abortion provider faces the possibility of criminal prosecution for a failure to comply with a state abortion regulation, the provider has standing to challenge the constitutionality of the regulation, despite the fact that the provider made no attempt to comply with regulation.³ Other authority holds that abortion providers have standing to bring an action to challenge, on behalf of their patients, the constitutionality of a state statute that imposed criminal liability on abortion providers for nearly all abortions regardless of fetal viability.⁴

Aspiring midwives had standing to bring a substantive due process challenge to a licensing statute regulating the practice of midwifery; because the statutory requirements allegedly made it more difficult for aspiring midwives to practice their chosen profession, they established an "injury in fact."⁵ A patient who brought a medical malpractice action against a qualified health care provider which was subject to a three-year statute of repose under the state's medical malpractice act lacked standing to raise an equal protection challenge to the classification scheme between classes of health care providers under the statute since the patient was not acting as a health care provider, and the classification did not implicate the equal protection rights of medical malpractice plaintiffs.⁶

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Footnotes

- 1 [Diamond v. Charles](#), 476 U.S. 54, 106 S. Ct. 1697, 90 L. Ed. 2d 48 (1986).
- 2 [Bryant v. Woodall](#), 363 F. Supp. 3d 611 (M.D. N.C. 2019).
- 3 [Comprehensive Health of Planned Parenthood Great Plains v. Williams](#), 322 F. Supp. 3d 921 (W.D. Mo. 2018) (dealing with a regulation requiring doctors who facilitated medication abortions to have a contract with an obstetrician/gynecologist making them available at all times to treat complications).
- 4 [Robinson v. Marshall](#), 415 F. Supp. 3d 1053 (M.D. Ala. 2019).
- 5 [Sammon v. New Jersey Bd. of Medical Examiners](#), 66 F.3d 639 (3d Cir. 1995) (the alleged injury of not being able to practice their chosen profession was fairly traceable to the statutory scheme and was likely to be redressed by a favorable decision ruling the scheme unconstitutional).
- 6 [Cummings v. X-Ray Associates of New Mexico, P.C.](#), 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).

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§ 158. Standing of voters to challenge constitutionality of statute

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A voter cannot question the validity of a primary election law because he or she is an elector where the law involves the rights of other voters in the state but not his or her own.¹ Also, registered electors have no standing to challenge the provisions of an absentee ballot statute since their interest is not peculiar to them, not direct, and too remote and speculative.² However, plaintiffs who asserted voter standing in challenging a transportation funding law had a cognizable claim under a constitutional provision prohibiting contracting state debt without a public referendum.³ An independent political candidate had standing to challenge a state statutory requirement that nominating petitions must contain each signer's voter registration number.⁴ Voters enrolled in the Republican Party had constitutional standing to bring an equal protection challenge to a New York statutory scheme pursuant to which national convention delegate candidates, to be eligible for the ballot, had to collect signatures from the lesser of 5% or 1,250 of enrolled Republicans in their congressional districts.⁵

Voters who did not live in newly created majority-minority congressional districts and who did not allege any specific facts showing that they personally had been subjected to any racial classification lacked standing to challenge such districts as racial gerrymanders in violation of the 14th Amendment.⁶ Voters who did live in such districts had standing to challenge the composition of such districts.⁷ The standing of voters to challenge a state constitutional provision prohibiting political parties from endorsing candidates for nonpartisan office and thereby preventing these candidates from mentioning party endorsements in voter pamphlets distributed by city and county officials was held questionable where a separate state statute,

the constitutionality of which was not litigated, provided that a candidate's statement could not include the party affiliation of the candidate.⁸

CUMULATIVE SUPPLEMENT

Cases:

Alleged injuries to plaintiffs, who were a registered Arkansas ballot question committee, committee's canvasser, and registered voters, were fairly traceable to Arkansas's action in enforcing its initiative petition rules requiring in-person signatures and in-person notarization, as required for plaintiffs to have Article III standing to bring action alleging enforcement of the petition rules during the COVID19 pandemic would impermissibly burden their First Amendment rights to express their position on a political matter; absent enforcement of the challenged in-person petitioning rules, the plaintiffs asserted injuries would disappear, as the alleged injuries were not result of their own or some third party's independent action, nor were they caused solely by COVID-19 pandemic. [U.S. Const. art. 3, § 2, cl. 1](#); [U.S. Const. Amend. 1](#); [Ark. Const. art. 5, § 1](#); [Ark. Code Ann. § 7-9-108](#). [Miller v. Thurston](#), 967 F.3d 727 (8th Cir. 2020).

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Footnotes

- 1 [Kelso v. Cook](#), 184 Ind. 173, 110 N.E. 987 (1916).
A voter who does not allege that he ever was registered or made any application to be registered but who, so far as appears, may have been entitled to apply for registration is not in a position to impugn the constitutionality of a statute for registration on the ground that it in effect requires a longer residence in the county than is required by the Constitution of the state and otherwise unreasonably impedes the exercise of the constitutional right of voting. [Wiley v. Sinkler](#), 179 U.S. 58, 21 S. Ct. 17, 45 L. Ed. 84 (1900).
- 2 [Kauffman v. Osser](#), 441 Pa. 150, 271 A.2d 236 (1970).
- 3 [Schulz v. State](#), 84 N.Y.2d 231, 616 N.Y.S.2d 343, 639 N.E.2d 1140 (1994).
- 4 [Texas Independent Party v. Kirk](#), 84 F.3d 178 (5th Cir. 1996).
- 5 [Rockefeller v. Powers](#), 74 F.3d 1367 (2d Cir. 1995).
- 6 [Bush v. Vera](#), 517 U.S. 952, 116 S. Ct. 1941, 135 L. Ed. 2d 248 (1996); [Shaw v. Hunt](#), 517 U.S. 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996); [U.S. v. Hays](#), 515 U.S. 737, 115 S. Ct. 2431, 132 L. Ed. 2d 635 (1995).
- 7 [Bush v. Vera](#), 517 U.S. 952, 116 S. Ct. 1941, 135 L. Ed. 2d 248 (1996); [U.S. v. Hays](#), 515 U.S. 737, 115 S. Ct. 2431, 132 L. Ed. 2d 635 (1995).
Voters who lived in a congressional election district which was alleged to be the product of an unconstitutional racial gerrymander had standing to challenge that part of the districting plan which defined the district in which they resided, but they did not have standing to challenge a second district in the state which was also alleged to be the product of a racial gerrymander. [Shaw v. Hunt](#), 517 U.S. 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996).
- 8 [Renne v. Geary](#), 501 U.S. 312, 111 S. Ct. 2331, 115 L. Ed. 2d 288 (1991).

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§ 159. Standing of strangers to litigation or subject matter thereof to challenge constitutionality of statute; nonparties

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A person who is not a party to a certain contract cannot raise the constitutional objection that a particular statute impairs the obligation of the contract.¹ Nor can strangers who are not parties to an action raise the question of the constitutionality of a statute as impairing the rights of a party.² Further, one brought before the court as a formal party only will not be heard to object that there has been a denial of due process in enlarging the liability to be borne by someone else.³

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Footnotes

- ¹ [Grand Rapids & I. Ry. Co. v. Osborn](#), 193 U.S. 17, 24 S. Ct. 310, 48 L. Ed. 598 (1904); [Lindsay-Strathmore Irr. Dist. v. Wutchumna Water Co.](#), 111 Cal. App. 688, 296 P. 933 (4th Dist. 1931); [Bice v. Haines City](#), 142 Fla. 371, 195 So. 919 (1940); [State ex rel. Lynch v. Rhodes](#), 176 Ohio St. 251, 27 Ohio Op. 2d 155, 199 N.E.2d 393 (1964).
- ² [C. Scheerer & Co. v. Deming](#), 154 Cal. 138, 97 P. 155 (1908); [H.P. Cornell Co. v. Boyer](#), 82 A. 385 (R.I. 1912).
- ³ [George Moore Ice Cream Co. v. Rose](#), 289 U.S. 373, 53 S. Ct. 620, 77 L. Ed. 1265 (1933).

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§ 160. Standing of other miscellaneous classes to challenge constitutionality of statute

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Contractors have standing to assert an equal protection challenge to an ordinance according preferential treatment to certain minority-owned businesses in the award of city contracts.¹ Subcontractors who are not awarded portions of a federal highway contract as a result of the contract's subcontractor compensation clause, offering financial incentives to prime contractors for hiring disadvantaged subcontractors, have standing to seek forward-looking declaratory and injunctive relief against the future use of such compensation clauses on equal protection grounds.²

"Amicus curiae" is a friend of the court.³ The term refers to persons, whether attorneys or laypersons, who interpose in a judicial proceeding to assist the court by giving information, or otherwise, or who conduct an investigation or other proceeding on request or by court appointment.⁴ An amicus curiae may not raise a constitutional question,⁵ nor will the court consider a constitutional point suggested or raised only by an amicus curiae⁶ except where the question relates to the jurisdiction of the court.⁷

Observation:

A nonprofit organization's employees had standing to bring an action alleging that the exclusion of church-provided parsonages from taxable income of ministers of the gospel violated the Establishment Clause even though employees had not yet been denied refunds they had claimed under statute, where the Internal Revenue Service had not rendered decision within six months.⁸

CUMULATIVE SUPPLEMENT

Cases:

Having to undergo eligibility checks for every purchase and being placed at mercy of imprecise, slow, and erratic system was sufficient for firearm owners to have standing to bring declaratory judgment action under § 1983 against California Attorney General, alleging that state law regulating ammunition sales violated Second Amendment, since it was actual injury to legally protected interest, fairly traceable to new state statutes and it was likely that injury would be redressed by favorable decision. [U.S. Const. art. 3, § 2, cl. 1](#); [U.S. Const. Amend. 2](#); [42 U.S.C.A. § 1983](#); [Cal. Penal Code §§ 30312, 30314, 30342, 30347, 30348, 30350, 30352, 30370, 30385, 30390, 30395](#); [Cal. Code Regs. tit. 11, § 4263](#). [Rhode v. Becerra](#), 445 F. Supp. 3d 902 (S.D. Cal. 2020).

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Footnotes

- 1 [Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville, Fla.](#), 508 U.S. 656, 113 S. Ct. 2297, 124 L. Ed. 2d 586 (1993).
- 2 [Adarand Constructors, Inc. v. Peña](#), 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995) (the evidence indicated that the government let contracts involving guardrail work that contained such clauses at least once per year in the state, that the subcontractor was likely to bid on each of these contracts, and was required to compete for such contracts against small disadvantaged businesses).
- 3 [Am. Jur. 2d, Amicus Curiae § 1](#).
- 4 [Am. Jur. 2d, Amicus Curiae § 1](#).
- 5 [Kennedy v. Truss](#), 40 Del. 424, 13 A.2d 431 (Super. Ct. 1940); [State by Clark v. Applebaums Food Markets, Inc.](#), 259 Minn. 209, 106 N.W.2d 896 (1960); [City of Kansas City v. Kindle](#), 446 S.W.2d 807, 41 A.L.R.3d 620 (Mo. 1969).
- 6 [Higbee v. Housing Authority of Jacksonville](#), 143 Fla. 560, 197 So. 479 (1940); [Long v. Odell](#), 60 Wash. 2d 151, 372 P.2d 548 (1962).
- 7 [New York Life Ins. Co. v. Hardison](#), 199 Mass. 190, 85 N.E. 410 (1908); [State v. Peckard](#), 35 N.D. 298, 160 N.W. 150 (1916).
- 8 [Gaylor v. Mnuchin](#), 919 F.3d 420 (7th Cir. 2019).

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